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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7854 OF 2006

Ashok Mahadeo Kalage & anr. Petitioners
versus
Krishnath Dnyanu Chambhar
@ Shinde and others Respondents

Mr.A.B.Borkar for petitioners.
Mr.P.U.Badadare for respondents 1 to 5.

CORAM : A.S.OKA, J.

DATE : 29th June 2007

PC :

1. Heard advocates for the parties. By this petition under Article 227 of the Constitution of India, the challenge is to the order dated 22nd September 2006 passed by the learned Ad-hoc Additional District Judge, Kolhapur by which an application for condonation of delay made by the petitioner has been rejected. The petitioners are the first and second defendants in a suit filed by the first to sixth respondents. The suit relates to land bearing Gat No.595 admeasuring 9 Are situate at Village Kerli, Tal. Karveer, District Kolhapur. The decree was

passed against the petitioners on 28th June 2002 declaring that the sale deed under challenge was illegal. The petitioners were directed to remove construction made by them on the suit property and hand over possession thereof to the plaintiffs.

2. The petitioners preferred an appeal to the District Court on 17th December 2003 along with an application for condonation of delay. The said application has been rejected by the impugned order.

3. The learned advocate for the petitioners invited my attention to the averments made in the application for condonation of delay. He pointed out that the learned Appellate Court has adopted a hypertechnical approach. He submitted that the Court ought to have been liberal while condoning the delay in view of the settled position of law.

4. The learned advocate for the original plaintiffs submitted that the petitioners have executed a registered sale deed on 15th March 2004 in respect of suit property in favour of one Vijay Madhav Shete. It is submitted that the petitioners have no subsisting interest in the

subject matter of suit.

5. I have considered the submissions. Though the application for condonation of delay was filed in December 2003, the impugned order was passed on 22nd September 2006. The fact that the petitioners have sold the suit property was not brought to the notice of the Appellate Court by the petitioners. The Appellate Court has considered the conduct of the petitioners and has held that no sufficient cause was made out.

6. Considering the facts and circumstances of the case and considering the sale effected by the petitioners during the pendency of the application for condonation of delay, it is very difficult to find fault with the impugned order passed by the Appellate Court. While considering the application for condonation of delay under section 5 of the Limitation Act, a justice oriented approach is contemplated. Considering the facts of the case it is difficult to find fault with the order of the Appellate Court. There is no merit in the petition and the same is accordingly dismissed.

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(A.S.OKA, J.)